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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Jerome Barnes,

10 Plaintiff,

11 v.

12 David Shinn, et al.,

13 Defendants.  
14

No. CV-22-00127-PHX-DLR (JFM)

**ORDER**

15  
16 Before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge  
17 James F. Metcalf (Doc. 33) regarding Defendant Siji Thomas’s Motion to Set Aside default  
18 (Doc. 29). The R&R recommends that Defendant’s motion be granted and the entry of  
19 default on June 29, 2023 (Doc. 27) be set aside. The Magistrate Judge advised the parties  
20 that they had fourteen days from the date of service of a copy of the R&R to file specific  
21 written objections with the Court. (Doc. 33 at 5.)

22 On August 10, 2023, Plaintiff filed his objection. (Doc. 34.) Defendant filed his  
23 response on August 24, 2023. (Doc. 35.)

24 The Court has considered Plaintiff’s objection and reviewed the R&R de novo. *See*  
25 Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1). The Magistrate Judge correctly determined  
26 that Plaintiff has not shown that, in failing to timely answer the complaint,<sup>1</sup> Defendant  
27 intended to take advantage of Plaintiff, to interfere with judicial decision making, or to

28 <sup>1</sup> The Court notes that Defendant disputes Plaintiff’s assertion that she was properly served.

1 manipulate the legal process. The Magistrate Judge also correctly found that Defendant has  
2 adequately established the existence of a factual dispute as to Defendant's liability on a  
3 claim requiring proof of a deliberate indifference. Finally, the Magistrate Judge correctly  
4 determined that Plaintiff would suffer no prejudice if the default were set aside. There has  
5 been no showing that Plaintiff's ability to litigate the case in any way has been harmed or  
6 limited or that he is worse off if the default is set aside than he would have been if  
7 Defendant had timely answered.

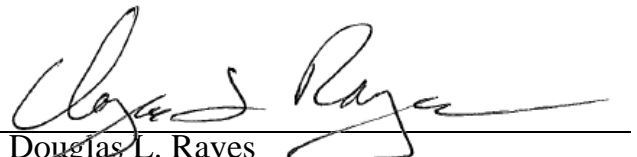
8 Plaintiff's objection argues that Defendant has been served with complaints in the  
9 past and is aware of the necessity to respond, and therefore, her failure to respond is further  
10 evidence of her deliberate indifference. That conclusion is neither logical nor relevant to  
11 the issue before the Court. Plaintiff fails to offer evidence or argument that, in failing to  
12 file a timely answer, Defendant intended to take advantage of Plaintiff, to interfere with  
13 the judicial decision making, or to manipulate the legal process.

14 Plaintiff also asserts in his objection that he was prejudiced by the late answer  
15 because of the nature of his medical condition. That is an argument that might be made as  
16 part of the alleged damages caused by Defendant's alleged indifference, but the Court does  
17 not find it to be evidence that Plaintiff's ability to litigate the case has been harmed.

18 **IT IS ORDERED** as follows:

- 19 1. Plaintiff's objection (Doc. 34) is **OVERRULED**.  
20 2. The R&R (Doc.33) is **ACCEPTED**.  
21 3. Defendant's Motion to Set Aside Default (Doc. 29) is **GRANTED**.

22 Dated this 6th day of October, 2023.

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27 Douglas L. Rayes  
28 United States District Judge